Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
McCaw Cellular Communications, Inc. Petition for Rule Making; Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services; Telecommunications Industry Association Petition for Rulemaking	)	WT Docket No. 00-19 RM-9418

JUL 2 2000

COMMENTS OF ECHOSTAR SATELLITE CORPORATION

EchoStar Satellite Corporation ("EchoStar") hereby files these comments in response to the Notice of Proposed Rulemaking released in the above-captioned matter.[1] EchoStar, through its wholly-owned subsidiaries and affiliates, is one of the leading providers of Direct Broadcast Satellite ("DBS") programming services in the United States, serving more than 4 million subscriber households with hundreds of digital television and audio channels. EchoStar currently operates five DBS satellites from three orbital locations and recently launched a sixth high-power satellite that will enhance its service offerings, including the use of

[1] *See In the Matter of Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services; Amendment of Part 21 of the Commission's Rules for the Domestic Public Fixed Radio Services; McCaw Cellular Communications, Inc. Petition for Rulemaking; Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services; Telecommunications Industry Association Petition for Rulemaking*, FCC 00-33 (rel. Feb. 14, 2000) ("*Microwave NPRM*").

another orbital slot (subject to any necessary Commission approvals). In addition, EchoStar holds licenses to provide GSO FSS services in the Ku- and Ka-bands.

EchoStar's initial comments in this proceeding are limited to cautioning the Commission against doing anything in this proceeding that might prejudice the integrity of the DBS services that are enjoyed by almost 13 million households throughout the nation. In particular, in connection with matters that are largely unrelated, the *Microwave NPRM* invites comment on the option of identifying certain bands above 2 GHz in which satellite and terrestrial microwave licensees would operate on a "co-primary basis."[2] As an example of this proposed sharing approach, the Commission cites the "proposed reuse of existing [DBS] spectrum in the 12.2-12.7 GHz band. . . as outlined in the Broadwave Albany, LLC [Northpoint] waiver requests" in which "Broadwave seeks co-primary status authority to provide multi-channel video programming."[3]

The Commission's example is problematic for several reasons. **First**, the Commission incorrectly implies that Northpoint has requested co-primary use of the 12.2-12.7 GHz band with DBS. This is not accurate. Recognizing that DBS is the prior and primary user of the 12.2-12.7 GHz band, Northpoint has "assert[ed] that its proposed service will be on a *secondary, non-interfering basis* to [DBS]."[4] While Northpoint has asserted that its service would operate on a co-primary basis with any new Fixed Satellite Services that are introduced in

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[2] *Id.*

[3] *Id.*

[4] *See Wireless Telecommunications Bureau Seeks Comment on Broadwave Albany, L.L.C. et al., Requests for Waiver of Part 101 Rules*, 14 FCC Rcd. 3937 (1999) (emphasis added).

the band (e.g., NGSO FSS systems), it has not made a similar assertion with respect to DBS.[5] Indeed, it has affirmatively stated and requested a secondary designation.

Second, and more importantly, Northpoint's proposed operations in the 12.2-12.7 GHz band, if authorized, would cause harmful interference into the reception of DBS service by consumers. As the Commission acknowledges, Northpoint's proposed operations in the 12.2-12.7 GHz band is the subject of ongoing rulemaking and application proceedings in which harmful interference to DBS and other satellite operators is a major issue in dispute. While Northpoint has repeatedly claimed that its proposed operations would not interfere with DBS services, a growing body of analysis and test data submitted in those proceedings support the opposite conclusion.[6] Notably, the tests conducted by Northpoint were designed so that the most affected areas coincided with the Potomac River and federal parklands areas where affected consumers were unlikely to be found. In a soon to be released report of actual interference measurements conducted jointly by DIRECTV and EchoStar based on more realistic testing parameters, it will be shown that operation of Northpoint's proposed system will cause a significant reduction in the availability of DBS service to existing and future customers.

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[5] *Id.*

[6] *See, e.g., EchoStar Preliminary Report on the Impact of Northpoint on the Direct Broadcast Satellite Service Based Upon Testing Performed to Date* (Oct. 29, 1999); DIRECTV, Inc., *Conclusions to Date Regarding Harmful Interference From a Proposed Northpoint Technology Terrestrial System Operating in the DBS Downlink Band, 12.2-12.7 GHz* (January 27, 2000); *Application of DIRECTV, Inc. For Expedited Review and Request for Immediate Suspension of Testing, In the Matter of Diversified Communication Engineering, Inc., Experimental Special Temporary Authorization,* File No. 0094-EX-ST-1999, Call Sign WA2XMY (June 25, 1999); *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency, with GSO and Terrestrial Systems in the Ku-band Frequency Range,* ET Docket No. 98-206, Comments of DIRECTV, Inc. (filed Mar. 2, 1999); Reply Comments of DIRECTV (filed Apr. 14, 1999); *see also Comments of Pegasus Communications Corporation,* ET Docket No. 98-206 (Dec. 29, 1999).

Third, the option of identifying bands for co-primary sharing between satellite and microwave licensees begs an important threshold question – whether microwave operations can be accommodated in spectrum that is now reserved for such operations on a primary basis. There is ample spectrum that Northpoint could use to provide terrestrial multichannel video service. Of course, Northpoint would have to purchase the rights to that spectrum, either at auction or in the secondary market, like all other companies with similar business plans. Northpoint has not offered a concurring technical reason why it must use a band used by almost 13 million households, and the Commission should not credit what seems to be the true reason -- Northpoint's desire not to have to pay for its spectrum based on its theory that it would only operate on a secondary basis.

Fourth, the "option" identified by the Commission seems to be extraneous, or tangential at best, to the main subject matter of this rulemaking. Accordingly, the Commission should leave the Northpoint interference questions to be decided in the proceedings where they are the core issues in dispute, as opposed to incorporating them in this largely unrelated proceeding. In any event, EchoStar hereby incorporates by reference its submissions in those proceedings.

In sum, the Commission cannot rely upon the Northpoint example in order to demonstrate the ability of satellite and terrestrial systems with a ubiquitous subscriber base to successfully share spectrum on a co-frequency, co-coverage basis. Indeed, such a conclusion should not be surprising, since the Commission recently reached the opposite determination in its *18 GHz Order*.[7] In that proceeding, the Commission stated:

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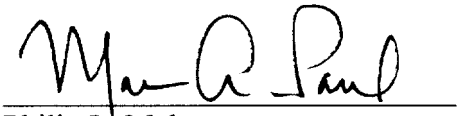
[7] *See In the Matter of Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands,* (Continued ...)

> The vast majority of commenters agreed with our tentative conclusion that co-frequency sharing between terrestrial fixed service and ubiquitously deployed FSS earth stations in the 18 GHz band is not feasible, and that the public interest would be best served by separating these operations into dedicated sub-bands.[8]

The Commission should not reverse itself a few months after it reached that conclusion. Such a reversal of course would be all the more inappropriate as it would entail experimentation with co-frequency sharing, not in some virgin spectrum, but in a band that is one of the Commission's success stories -- a satellite band used by close to 13 million households.

Respectfully submitted,

EchoStar Satellite Corporation

By: 

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and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, FCC 00-212 at ¶ 17 (rel. June 22, 2000). Commenters in the 18 GHz proceeding, including the American Petroleum Institute, Cellular Telecommunications Industry Association and Telecommunications Industry Association, all indicated their general concern with the ability of microwave fixed services and satellite services to operate in the same band. *See id.* at ¶ 8 n.9.

[8] Id. at ¶ 17.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2000 a true and correct copy of the foregoing Comments Of EchoStar Satellite Corporation was sent via first class mail, postage prepaid, to the following:

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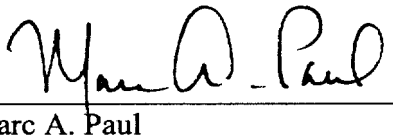

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